

J9B3PADS

Sentence

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

18 CR 454 (KPF)

5 JONATHAN PADILLA,

6 Defendant.

7 -----x

8 New York, N.Y.
9 September 11, 2019
3:30 p.m.

10 Before:

11 HON. KATHERINE POLK FAILLA,

12 District Judge

13
14 APPEARANCES

15 GEOFFREY S. BERMAN

16 United States Attorney for the
Southern District of New York

17 FRANK J. BALSAMELLO

Assistant United States Attorney

18 JAMES E. NEUMAN

19 Attorney for Defendant

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1 (Case called)

2 MR. BALSAMELLO: Good afternoon, your Honor. Frank
3 Balsamello for the United States. With me at counsel table is
4 Teddy Cohan, an intern in our office.

5 THE COURT: Welcome, and thank you very much.

6 Mr. Neuman?

7 MR. NEUMAN: James Neuman for Jonathan Padilla.

8 THE COURT: Sir, thank you very much. And
9 Mr. Padilla, good afternoon to you, sir.

10 THE DEFENDANT: Good afternoon, your Honor. How you
11 doing.

12 THE COURT: I'm doing well, sir, thank you.

13 Mr. Neuman, are there members of Mr. Padilla's family
14 or friends?

15 MR. NEUMAN: Yes, his mother is here and his uncle.

16 THE COURT: Are they able to understand, generally
17 speaking, what's happening?

18 MR. NEUMAN: Yes, yes.

19 THE COURT: Good to hear that. Thank you.

20 Let me please make sure I have the documents that I
21 should have. I have a presentence investigation report that is
22 dated July 8 of 2019. I have a defense sentencing submission
23 that is dated August 20 of 2019, with letters from family and
24 friends and certificates from BOP programs. And I have a
25 government's sentencing submission that is dated September 4 of

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1 2019.

2 Mr. Balsamello, is there anything else I should have
3 for the government?

4 MR. BALSAMELLO: No, your Honor. Thank you.

5 THE COURT: Mr. Neuman, is there anything else I
6 should have for the defense?

7 MR. NEUMAN: No, your Honor.

8 THE COURT: All right. Let me ask a couple of
9 questions. More of a housekeeping nature.

10 Mr. Balsamello, has the government had a sufficient
11 opportunity under Federal Rule of Criminal Procedure 32 to
12 review the presentence investigation report in this case?

13 MR. BALSAMELLO: Yes, we have.

14 THE COURT: I saw that there were some suggested edits
15 from the defense that were accepted by the probation officer.
16 Were there any objections or corrections submitted by the
17 government?

18 MR. BALSAMELLO: The correction -- there was nothing
19 submitted to probation. I do discuss in our submission the
20 discrepancy between our criminal history calculation.

21 THE COURT: We can talk about that now or later. I
22 actually think the probation office may be correct.

23 MR. BALSAMELLO: Okay.

24 THE COURT: Let's hold off on that for now. With the
25 exception of that guidelines calculation issue, does the

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1 government have any objections to the PSR?

2 MR. BALSAMELLO: No, your Honor.

3 THE COURT: Thank you for letting me know.

4 Mr. Neuman, have you and has Mr. Padilla had a
5 sufficient opportunity under Federal Rule of Criminal Procedure
6 32 to review the presentence report in this case?

7 MR. NEUMAN: Yes, your Honor.

8 THE COURT: Do you have any objections to it in its
9 current state?

10 MR. NEUMAN: No, we don't.

11 THE COURT: Okay. Thank you so much.

12 Mr. Balsamello, then let me ask you some questions
13 about the PSR, and then I'll ask them as well of Mr. Neuman.
14 Is the government seeking restitution or forfeiture in this
15 case?

16 MR. BALSAMELLO: No, your Honor.

17 THE COURT: Then I will not ask you further about it.
18 Let's talk about the disconnect in the criminal history
19 category. And as I understand the probation office's view,
20 everybody was in agreement that no points should be assessed
21 for the two sentences of five years' probation, because the
22 conduct that underlay those sentences was relevant conduct in
23 this case.

24 We're all in agreement on that point, correct?

25 MR. BALSAMELLO: Yes.

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1 THE COURT: As a result, they were not counted.

2 MR. BALSAMELLO: Correct.

3 THE COURT: The probation office says if you look at
4 application note 4 to guideline Section 4A1.1, it says that a
5 criminal justice sentence is a sentence that is countable under
6 4A1.2 that has a custodial or supervisory component.

7 What I understood that to mean was that if the
8 sentence counted for points, it also, potentially, could count
9 for this provision. And my thought was for the same reason
10 that those two probationary terms don't count for guidelines
11 points, it's the same reason they don't count for, if you will,
12 criminal justice sentence points. Because, in theory, it's all
13 related to this conduct, and I would think you could make the
14 argument to me, and I imagine you will, that this is a case
15 that is not about merely 17 sales to an undercover. It's as
16 well about this 2009 conduct, and I should keep this in mind
17 and I certainly will. But, it didn't occur to me that that
18 made it a criminal justice sentence that could be used under
19 Subsection D. But I will hear you in response.

20 MR. BALSAMELLO: I think there are two points to make
21 in response to that. First, under Section 4A1.2, I
22 unfortunately don't have my guidelines in front of me, but I
23 believe there is a subsection within 4A1.2 that's actually
24 headed sentences countable -- I believe it's counted and
25 excluded.

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1 THE COURT: There is indeed.

2 MR. BALSAMELLO: The reason that the sentence is
3 not -- the five-year probationary sentences are not given
4 points under 4A1.1(b) is not the reason in the counted and
5 excluded section if I'm --

6 THE COURT: I will hand you mine. I'm sure you'll
7 share with Mr. Neuman.

8 MR. NEUMAN: I have a copy.

9 THE COURT: Thank you.

10 MR. BALSAMELLO: So the Section 4A1.2(c) sentences
11 counted and excluded lists certain categories of crimes.

12 THE COURT: Yes.

13 MR. BALSAMELLO: That are, for some reason, because of
14 their nature, trespassing, driving while intoxicated. They are
15 either counted or excluded sort of categorically because of the
16 crime that's committed.

17 THE COURT: Yes.

18 MR. BALSAMELLO: So, our office's position is that
19 when the note refers to sentences that are counted versus not
20 counted under Section 4A1.2, that they're referring to counted
21 and excluded, that is the terminology actually used for
22 4A1.2(c). That it's not a reference to any sentence for which
23 points aren't attributed under 4A1.2 generally. It is a
24 specific reference to things that are counted and not counted
25 under 4A1.2(c)(1) and (2).

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1 THE COURT: Whereas here, what you'd say is it's not
2 4A1.2 that excludes it. It is 1B1.3.

3 MR. BALSAMELLO: Correct. Correct. Because of the
4 relevant conduct aspect here. And sort of a matter of equity
5 or logic I guess to how this applies also.

6 Your Honor pointed out part of our argument will be
7 this is long running conduct by this defendant. There had been
8 drug distribution dating back so many years. So the
9 conviction, the sentence back in 2009, there is a logic to not
10 assessing points for those convictions themselves.

11 But there is a separate harm not accounted for
12 anywhere in the guidelines or anywhere else in this discussion
13 for the fact that he was doing this while under the criminal
14 justice sentence, that he was doing this while on probation,
15 under the supervision of court. So that is sort of an
16 equitable matter why we think there is a reason to still assess
17 those points. And then as a technical matter, the reading
18 under the guidelines is that counted and excluded is a
19 reference to these categories of crimes that are definitionally
20 here in Subsection (c). Counted or excluded is not a reference
21 to just anything that doesn't get points because of the
22 relevant conduct provision, as you said, in 1B1.3.

23 THE COURT: Okay. Was that your second argument? You
24 had said to me there were two arguments.

25 MR. BALSAMELLO: Right, it is the guideline subsection

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1 point, and separately the separate harm. I think that the
2 points are addressing the fact that there was court supervision
3 while the conduct was ongoing that gives at least a rationale
4 for applying those points that wouldn't apply to hitting him
5 twice for the same conviction. Those were the two arguments.

6 THE COURT: I understand that. And appreciating that
7 the parties have stipulated to a criminal history category of
8 II, you'll understand that neither one of you will consider it
9 a breach of an agreement if I ask for your respective positions
10 on this position, correct?

11 MR. BALSAMELLO: Correct.

12 THE COURT: I now understand better your argument and
13 I do appreciate that.

14 Let me see if there are other issues that I want to
15 address with you before speaking more broadly about the
16 sentence. Do you have knowledge, sir, of the criminal cases
17 that are discussed in paragraphs 54 and 55 and, more
18 specifically, is the one discussed in 55 also relevant conduct?

19 MR. BALSAMELLO: I would have to look back at the NYPD
20 records that we have. Standing here, I don't have specific
21 additional knowledge to add to this. Looking at just the
22 precinct that it occurred in, if this had been a conviction and
23 we were talking about whether there would be points for
24 relevant conduct or whether it's part of sort of the ongoing
25 offense that's bringing us here, I would very likely be taking

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1 the position it is part of the same ball of conduct that gave
2 rise to this case. It is a drug sale in immediate proximity to
3 where this conspiracy was occurring.

4 I don't have the particulars on it in front of me, but
5 it's in the conspiracy period, obviously it is very close
6 geographically and within the precinct. So I believe that it
7 is, but I can't say definitively.

8 THE COURT: Fair enough. By the same token, you are
9 not arguing that it is something different. You are not going
10 to argue that it is separate criminal conduct that I should
11 consider separate from everything else in the charged
12 conspiracy.

13 MR. BALSAMELLO: No. I think it is another instance
14 of the same drug behavior that has brought the defendant here.

15 THE COURT: Am I correct that there is an arrest for
16 narcotics trafficking in 2009, and then the next one is 2018?

17 MR. BALSAMELLO: That is -- these are his reported
18 arrests.

19 THE COURT: Okay. Are there unreported arrests of
20 which you are aware?

21 MR. BALSAMELLO: There -- I would have to go back to
22 the file. But there are additional sealed arrests, absolutely.
23 This is very common in the state. And I reference and I think
24 it's in the PSR offense conduct section, though not listed
25 under the arrests.

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1 When probation does the PSR, they go by what they are
2 able to get on rap sheets that they pull. It is extremely
3 common in the state for an arrest to result in a conditional
4 discharge and drug program, or be disposed of in some way that
5 ultimately it is sealed and not reported to probation. So I
6 believe that the total number of arrests that we were aware of
7 was 20.

8 THE COURT: You're anticipating my next question.
9 Because I saw six or so arrests in the PSR, and I saw 20 in
10 your submission, and I wasn't sure about the disparity.

11 MR. BALSAMELLO: All of the ones in between would be
12 arrests that, for one reason or another, were ultimately
13 sealed. Many times that means there's not a disposition
14 reflecting guilt. Sometimes it means there is a plea, drug
15 program, conditional discharge, plea is withdrawn. There are
16 many different ways the state plays out cases where,
17 ultimately, and unfortunately, at a federal sentencing we don't
18 get a full picture of the person's arrest history.

19 But at the very least we're often able to get a list
20 of the arrests, the fact that they occurred, and the very
21 basics of where they happened within what the top charge may
22 have been. So, there is, even just here, there was a single
23 arrest listed in 2013, a contempt arrest for domestic violence.
24 But I believe there were also other drug arrests between 2009
25 and 2018, just none of which resulted in unsealed dispositions.

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1 THE COURT: And therefore that I don't have.

2 MR. BALSAMELLO: And that we have, if the Court would
3 want them, we have, I'm sure arrest reports, complaint reports,
4 things of that nature for each one of them.

5 THE COURT: But they were resolved in a sealed manner,
6 and I don't know at this time why each one was resolved in the
7 manner that it was. I mean, you did argue to me that there
8 were 20 arrests and I didn't have substantiation for those
9 arrests.

10 MR. BALSAMELLO: And if the Court wanted, the best we
11 could provide in terms of substantiation would be the NYPD 61,
12 the complaint reports and the arrest reports. There
13 wouldn't -- to the extent there would be transcripts or things
14 of that nature, those are under seal. There would be a
15 different process to get. But, we are aware at the very least
16 of the occurrence of that many arrests.

17 THE COURT: I know you'll take this the right way. I
18 don't have them here with me today, and no effort was made to
19 bring them to me before now. So, I don't think it's
20 appropriate for me to consider them. Perhaps going forward, if
21 there are other defendants in this case for whom you think it
22 would be illuminating of some issue for me to know about these
23 other arrests, I should have more substantiation for them. So
24 I don't think I am going to focus on them for this defendant.

25 Do you have more knowledge than what's in the PSR of

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1 the disciplinary incidents?

2 MR. BALSAMELLO: No, your Honor. We simply don't get
3 those from the bureau of prisons either. Probation has some
4 amount of access, at least just of seeing what occurred, what
5 the very basic nature of the offense and what the discipline
6 was that was imposed. So, we really are limited to what
7 probation is able to access there.

8 THE COURT: All right. I understand being in a place
9 that you are not supposed to be in. I understand less
10 interfering with the security device. That to me conjures up a
11 whole lot of images, I don't know what it is. I'll ask
12 Mr. Neuman, and if finance he knows, he will tell me.

13 Let me turn to the defense. Mr. Neuman, let me begin
14 with a housekeeping matter. At the very back of the
15 presentence investigation report, there are mandatory, standard
16 and special conditions of supervised release beginning at page
17 24. Have you been able to review those with your client
18 Mr. Padilla?

19 MR. NEUMAN: Judge, frankly, I don't think that I
20 reviewed the conditions with my client.

21 THE COURT: I would like you to do that for this
22 reason. Number one, I am going to be asking whether he is
23 aware of them and this would be helpful. Secondly, it would be
24 my preference, if the parties are in agreement, that I would
25 make reference to them as the mandatory, standard and special

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1 conditions of supervised release, and not read into the record
2 each one of them.

3 So, would you like to take a moment to review them
4 with your client?

5 MR. NEUMAN: Yes.

6 THE COURT: Would you prefer I step off the bench as
7 you do that?

8 MR. NEUMAN: I think we can do it, I think it would be
9 more efficient if you remained, if you don't mind.

10 THE COURT: I don't want you to be rushed in your
11 conversations with your client.

12 MR. NEUMAN: I won't be rushed.

13 THE COURT: Thank you.

14 (Defendant conferring with his counsel)

15 MR. NEUMAN: Judge, we've finished up. I think I was
16 fast, but I believe I gave him all the essential information.

17 THE COURT: May I address your client directly?

18 MR. NEUMAN: Yes, please do.

19 THE COURT: Mr. Padilla, I see now that you've had an
20 opportunity to review the mandatory, standard and special
21 conditions of supervised release with your attorney. Were you
22 able to do that just now?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Did you understand what they provided,
25 sir?

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1 THE DEFENDANT: Yes, I did.

2 THE COURT: To the extent you had any followup
3 questions or concerns, were you able to address those with your
4 attorney?

5 THE DEFENDANT: Yes.

6 THE COURT: So, when I impose sentence in this case,
7 do you agree that I may refer to these collectively as the
8 mandatory, standard and special conditions of supervised
9 release, without reading each of them into the record?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Thank you. Mr. Neuman, I presume you
12 agree as well, sir?

13 MR. NEUMAN: Yes, your Honor.

14 THE COURT: Thank you. Mr. Neuman, additional
15 questions, please. Do you have any insight into the
16 disciplinary infractions that I was discussing with the
17 prosecutor a moment ago?

18 MR. NEUMAN: Judge, I think the -- the one that
19 involved being in an unauthorized area had to do with trying to
20 make a phone call, if I remember. Something like that.

21 Your Honor, may I have a moment? I'm getting
22 corrected.

23 THE COURT: Take whatever time you need. Thank you.

24 (Defendant conferring with his counsel)

25 MR. NEUMAN: Oh, okay. Now I'm remembering. What

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1 happened is that he changed his cell without permission, which
2 apparently is something that --

3 THE COURT: You can't do.

4 MR. NEUMAN: -- you can't do. Fairly routine, I also
5 understand, but is not allowed. That's --

6 (Defendant conferring with his counsel)

7 MR. NEUMAN: Okay. Judge, I remember now. He was in
8 the SHU at the time of the other infraction, and was it was
9 Christmas Eve, he was trying to get the attention of the
10 officer to make a phone call to tell his family they wouldn't
11 be able to visit. And so there is a tray, kind of held on to
12 it to get the attention of the officer. That's what it was.
13 Put his hand in the slot.

14 THE DEFENDANT: And called for the lieutenant.

15 THE COURT: I missed -- I didn't know if you wanted
16 him to speak.

17 MR. NEUMAN: I think it's okay, Judge.

18 THE DEFENDANT: Your Honor, what happened was I had
19 came to the box Christmas Eve and there was a visit the next
20 day. So I tried to get ahold of the SHU lieutenant to see if I
21 could call my family. They didn't want to let me get a call,
22 so I put my hand in the slot for one minute. And the
23 lieutenant wrote me up for that.

24 THE COURT: Were you able to tell your family not to
25 come the next day?

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1 THE DEFENDANT: Yeah, but I got written up.

2 THE COURT: Okay. Mr. Neuman, let's turn to the issue
3 of the guidelines calculations. It would not surprise me if
4 you agreed with my views rather than the prosecutor's views,
5 but I do want to hear from you on the issue.

6 MR. NEUMAN: Yes, Judge. So, when I saw the report
7 and the prosecutor's letter I tried to, I did try to research
8 this. I didn't find case law reported on this.

9 THE COURT: Neither did I, yes.

10 MR. NEUMAN: My next step is I called the very helpful
11 people at the guideline, I mean the U.S. guidelines commission.
12 They have a hotline. I don't know if your Honor has used it.
13 It's very helpful, they take questions from prosecutors,
14 judges, lawyers. And they're terrific.

15 So I called them up, and they agreed with probation.
16 Their reasoning to me is they said it's -- they didn't have any
17 cause law either. They said it is a matter of interpreting the
18 plain language of these two guidelines, first 4A1.1D, and
19 application note four says that basically refers you to 4A1.2
20 to see what sentences are counted. In other words 4A1.1(d),
21 application note 4 has a reference there about any criminal
22 justice sentence. So, if we go to 4A1.2, application note 1,
23 it says prior sentence is a sentence that's essentially -- I'm
24 doing shorthand -- not relevant conduct. So, in other words,
25 they don't use the phrase "relevant conduct." They say it has

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1 to be counted, not otherwise excluded. So, they also said that
2 they view that two point enhancement for probation, it can't
3 stand alone. There has to be, they used the phrase it is not a
4 naked enhancement. It has to be based upon something else
5 that's countable.

6 So, that was the best authority I could get. It makes
7 sense to me, but I don't have any other precedent to cite for
8 you.

9 THE COURT: Of course. Thank you for letting me know.
10 Let me see if I have additional housekeeping questions for you.

11 Let me turn to the government. Mr. Balsamello, if I'm
12 not mistaken, this is the first sentencing in this case?

13 MR. BALSAMELLO: That's correct.

14 THE COURT: As a result of that, I need from both
15 sides a little bit more insight than I currently have into the
16 hierarchy and the nature of this charged conspiracy. And I am
17 looking for your assistance in that regard.

18 I don't know, for example, I suspect the answer is no,
19 but I don't know if I should discern anything from
20 Mr. Padilla's placement in the indictment, where he's located.
21 I do not know, I'm sensing that he himself was not involved in
22 violent activity. I'm sensing that the members of this
23 conspiracy may not have been involved in violent activity.
24 But, rather, their sales of drugs in this neighborhood may have
25 fostered a climate in which others felt more comfortable use

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1 violence.

2 Also, sir, his brother is in this case as well. And
3 to the extent that one recruited the other or one supervised
4 the other or they were just two individuals in the case of
5 equal culpability I'd like to know that as well.

6 So, I appreciate your permitting me the indulgence of
7 giving you these issues, and I'll hear anything you want to
8 tell me, but I'd also like to know that.

9 MR. BALSAMELLO: Certainly, your Honor. Much of what
10 your Honor said is correct, but I'll fill in some detail and
11 give some color.

12 In terms of the structure of the indictment and the
13 order and whether that reflects culpability or hierarchy,
14 things of that nature, to some degree it does. There are
15 certain ways in which it does and others in which it doesn't.

16 Kawain Nelson we know to have been a supplier to,
17 among other people, James Crooms and for a time Anthony Corley
18 who themselves supplied other people who made street-level
19 sales, including Mr. Padilla.

20 Within the middle of the indictment, though, there is
21 not much that can be gleaned from Mr. Padilla being below
22 Mr. Hudson or above Lamar Griffin. There is not much rationale
23 there. In many respects, what these guys were doing was fairly
24 similar.

25 I'll qualify that by saying since charging the case,

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1 we've developed a number of cooperating witnesses who have
2 given us more insight into each person, violence, firearms,
3 things of that nature, that now if we were to reorder the
4 indictment may have caused certain shifts.

5 But in terms of the way it's structured now and the
6 drug conspiracy aspect, from Albert Collins through the end,
7 essentially they're street-level crack cocaine sellers, and the
8 ways they went about doing it and some of the harms that they
9 may have had, the effects they may have had on the neighborhood
10 may have differed in kind, but not necessarily in gravity.

11 In terms of violence, we do know of several, we now
12 know of several individuals on this indictment possessing
13 firearms in connection with the conspiracy. We don't know of
14 Mr. Padilla being involved in any violence himself. I say that
15 because there may yet be a superseding indictment with some of
16 the defendants here being charged in 924 counts. That is an
17 aspect of the case. But you're correct in terms of some of the
18 most serious acts of violence that occurred in this
19 neighborhood, we know of a few discharges of firearms,
20 robberies, burglaries by people on this indictment. Not
21 Mr. Padilla directly.

22 That said, as your Honor indicated and as I probably
23 will argue further at the appropriate point, the entire culture
24 and nature of this community was dramatically and negatively
25 affected by Mr. Padilla and people who even had his role in

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1 this conspiracy in certain ways. It is interesting you
2 mentioned his brother, because his brother I think was fairly
3 similar in terms of their drug business, what they were doing
4 in terms of the sales. But just as a way to sort of convey how
5 pernicious this is and how much it sort of consumes people who
6 are involved in this activity, Mr. Padilla's mother, there was
7 a serious discussion about whether she would be charged in this
8 case.

9 THE COURT: The woman who is behind you?

10 MR. BALSAMELLO: Yes. Because the apartment that they
11 operated out of and the building they operated out of, and the
12 way this conspiracy just infected a community, it is very easy
13 I think when we then get to the sentencing of one person to
14 hear that, yes, he is a drug user.

15 In the instance of his mother, who we ultimately did
16 not charge, and there are more mitigating circumstances there I
17 think, but to look at certain defendants and appreciate the
18 circumstances in their lives that make them sympathetic when
19 they are alone here at this sentencing. Sometimes, though, to
20 lose sight of something the lead detective pointed out to me
21 when I was talking to him about sentencing in this case, which
22 was you move into an apartment building that is, as a
23 structure, is a place to live. It is a perfectly nice
24 building. There are families there. There are parents trying
25 to take kids to school in this neighborhood. And you step into

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1 the hallway, and you've got Mr. Padilla, his brother, other
2 conspirators in this case, selling crack, heroin, left and
3 right. With the crowds of users and addicts that come along
4 with it, with all of the poverty and harm and ultimately
5 violence that trails a conspiracy like this.

6 So, while there are sympathetic aspects certainly of
7 probably every defendant, many defendants who come before the
8 Court in a drug case, there's also a reason when law
9 enforcement looks at a community, where there have been a rash
10 of shootings, where there are routine robberies, they see who
11 are creating the environment where those things thrive.

12 For a month we were intercepting Mr. Padilla's phone,
13 so we had great insight into how many times drug customers were
14 coming into this apartment building -- this residential
15 building where families are trying to live and go about their
16 lives -- to go get a hit off Mr. Padilla or his brother or, at
17 times, his mother because they are not home, so they are making
18 sales in the door.

19 In isolation, a single quiet crack sale in a building
20 would not draw a federal prosecution. But in an aggregate,
21 where a conspiracy operates for years at a time and it has such
22 a damaging effect on the community around it, and it really
23 does, the government believes, lead to the conditions where the
24 shootings and robberies occur. So that is something meaningful
25 we believe to be addressed in cases like this.

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1 There's certainly, we recognize there is absolutely a
2 place in every sentencing to be considering the circumstances
3 of each defendant's life and what brought them here. But there
4 is also the need to address what they were doing collectively
5 in this neighborhood.

6 That was sort of a long diversion from the discussion
7 about his brother. But that is sort of how many of these
8 defendants are viewed in this case. Some of them, as I said,
9 there will be talk of gun possession and instances of street
10 violence and things like that as well. But that's where
11 Mr. Padilla, even as a non-violent participant in this
12 conspiracy, at least not violent as far as we are aware of,
13 where we believe were the grave harm has been caused by him and
14 the others who were with him, to the point that it even really
15 pulls in family members who maybe on their own wouldn't be
16 involved in selling crack cocaine hand-to-hand, but it consumes
17 the defendants themselves and it consumes really so many people
18 who are living around them just trying to live law-abiding
19 lives.

20 If the Court has any other questions with respect to
21 the conspiracy itself, I'm happy to address them.

22 THE COURT: I don't believe so. I'll hear you more
23 generally on sentencing. Thank you.

24 MR. BALSAMELLO: Sure.

25 THE COURT: Let me be more precise. It is my

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1 preference that you not rest on your submission. So, if you
2 have told me everything you want to tell me, including the
3 answering of my questions, then certainly sit down. But if
4 there are things you'd like to highlight in your written
5 sentencing submission or other things you'd like to call to my
6 attention, I do want to give that you opportunity.

7 MR. BALSAMELLO: There are some others. I won't
8 repeat things I just said.

9 Turning to Mr. Padilla specifically, because I was
10 mostly responding to sort of the structure of the conspiracy
11 question and the harm they caused generally.

12 Mr. Padilla, as his criminal history reflects, has
13 been involved in selling drugs in his community for many years.
14 Regardless of how that's calculated under the sentencing
15 guidelines, he has done it while on probation, after being
16 sentenced by a court for the same conduct. He's been arrested
17 a multitude of times, he's gotten in trouble while he's been in
18 federal custody.

19 For those reasons, especially, again, I come back
20 again to a conversation I had with the lead detective on the
21 case who did much of the surveillance and who oversaw the
22 controlled buys. I was talking to him about what our positions
23 would be at certain sentencings. And he started to describe
24 again just the -- the things that's hard to capture in a
25 courtroom or in a sentencing submission or in any way when

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1 we're removed from the community where this stuff happens. The
2 crowds of people that form. The groups that go to make these
3 buys, the groups that are selling. The shouting back and forth
4 about who's got product where. Bringing each other into sales
5 when they don't have product. In many respects, several of
6 this defendant's buys, he either had product on hand when he
7 was contacted by the undercover. He typically had product. If
8 he didn't, he knew right where to go, and there was a
9 co-conspirator to go to.

10 The amount of traffic and the economy created in a
11 community by the day-to-day hand-to-hand drug sales that,
12 again, in isolation can seem like they're not the most serious
13 thing in the world if you look at a single instance or a couple
14 of instances of a drug sale to a customer. When you think
15 about it day after day, hour after hour, for years at a time, I
16 think that's something that the law enforcement folks we work
17 with before we charge cases, that's what they're seeing and
18 hearing when they are talking about who we should charge and
19 why.

20 It was helpful for me to remember, even going into a
21 sentencing like this where it is drug conduct, admittedly we
22 are not talking about someone who shot someone himself or who
23 was running around with a gun, causing that kind of harm. But,
24 it's helpful to remember the source of harms and the ways that
25 this kind of drug conspiracy creates the environment where

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1 those other things do happen and where it becomes accepted and
2 commonplace for kids to be around, amidst crack is cooking in
3 this apartment. Customers over here. Dope customers there.
4 It's constant and it goes on for a long time with a lot of
5 people. So Mr. Padilla was certainly one of them. From
6 hearing his phone, this was his business. This was how he
7 lived. It was the way he supported himself. And part of
8 supporting himself was supporting his own use.

9 So, we know full well that he knows the harm that
10 comes with being a drug user. But he was perpetuating those
11 harms too.

12 We do think it is important to deter others in that
13 community who know there was a federal case that came out of
14 this. So they see there is a real consequence to a federal
15 drug prosecution. Often in the state there aren't consequences
16 for drug cases. And if anything, they're moving in a direction
17 of there being fewer consequences.

18 THE COURT: Just one moment, please. Let me probe
19 this a little bit. You are speaking now general deterrence and
20 this I understand. Do you perceive that there is a deterrent,
21 an incremental deterrence between the mandatory minimum
22 sentence that applies here, the guidelines range that the
23 probation office calculated, and the guidelines range that is
24 calculated in the government's plea agreement?

25 MR. BALSAMELLO: I think there is something

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1 incremental, and I think there are other important reasons.
2 The distinction between the minimum where the Court would be
3 telling the defendant you get the lowest thing I am allowed to
4 give you versus the guideline ranges that are at issue. I
5 think the guideline ranges themselves, there is a nine-month
6 overlap between them. There is not a tremendous difference
7 between what we had agreed to and what probation calculates, so
8 I think there's a sentence in that area that's -- there may not
9 be a dramatic difference in terms of general deterrence between
10 72 and 78 months. But I do think there is something meaningful
11 in terms of a message of the minimum. The lowest thing that
12 can be given will be given.

13 I think for there to be a sentence above the mandatory
14 minimum I do think has some additional deterrent value. We've
15 actually, in connection with this case, there is a sort of
16 companion case that we're prosecuting before Judge Swain where
17 we searched some cell phones of some guys who had been
18 supplying drug dealers in the same area. We saw a text message
19 from one brother to another with the press release from this
20 arrest and a discussion about Feds are coming, they ain't
21 playing. Because of a case like this.

22 So that doesn't mean that Mr. Padilla is the most
23 culpable of the murderers that have operated there or the
24 highest level drug suppliers, but, it does mean that people in
25 that community, and especially people who are involved in this

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1 very criminal activity, know when 10 or 12 or 15 of their
2 associates get taken at the same time, and then what happens to
3 them.

4 Very often, state prosecutions, they're back very
5 quickly. And I think that sometimes that's how we end up with
6 cases where someone's arrested 10 and more times, because it
7 can be there never is that message that there is a consequence.

8 So we do believe that a sentence we think in our
9 negotiated range is appropriate to accomplish that goal. I
10 think for the same sort of reasons respect for the law is
11 implicated here. I think there is a need to specifically deter
12 Mr. Padilla who has been in trouble before. Even if they've
13 been sort of minor disciplinary infractions, even while at the
14 MCC he's been defiant and sort of resisted authority in a way
15 that the Court should consider at least to some degree.

16 I think the overriding thing, though, that those who
17 have worked on this case and the government generally I think
18 wants to accomplish with this is to protect the community from
19 Mr. Padilla and from the broader, again, the broader conspiracy
20 that existed here. That if he and any number of these
21 defendants are back within a couple years, it will be the same
22 thing again is a very real concern. As it has happened before
23 when he's had cases before and is back, and the same conduct
24 continues.

25 So given those objectives of sentencing under Section

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1 3553(a), they're both accomplished with a sentence within the
2 range that we've negotiated in the plea agreement.

3 THE COURT: Thank you very much.

4 MR. BALSAMELLO: Thank you.

5 THE COURT: Mr. Neuman, I'll hear from you now, sir.
6 And you are welcome to respond to the issues that I've been
7 discussing with Mr. Balsamello. For you in particular, I think
8 I'd like to understand what plans your client has for reentry
9 into the community. There was I think a miscommunication with
10 his niece, not about where he would be living, but, if indeed
11 he's had a number of arrests and several of them have been for
12 narcotics sales, it's not clear to me why this one differs. So
13 I'll hear from you on anything you'd like to speak about, but
14 I'd like you to focus on those things too.

15 MR. NEUMAN: Okay. I'll try to go somewhat
16 sequentially here.

17 THE COURT: Of course.

18 MR. NEUMAN: Judge, we're not here to doubt the
19 scourge of drugs in the neighborhood. Nobody disputes that.
20 But I think it's clear from the prosecutor's presentation,
21 Mr. Padilla is a street-level drug dealer and he's an addict.
22 And he has been for a long time, and he's been committing, he's
23 been selling drugs and using them for a long time. And he
24 sells to support his habit. We admit that. He is not by any
25 stretch any kind of manager or organizer, did not enlist his

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1 brother to do these crimes. I'm told they don't even get
2 along. There is no hint in what I've seen that he has
3 committed any violence in connection with these crimes. It
4 sounds to me like he is as low level as they come. The
5 distinction being it's been going on for a while, and that's
6 true. We do acknowledge that.

7 But, the government mentioned about how it's sometimes
8 hard to convey something in a sentencing memo. Well, what I
9 really want to convey is the kind of person that Mr. Padilla
10 is. What I have seen personally when I've represented him,
11 been representing him, is a person who has been struggling
12 with, trying to find a balance between taking responsibility
13 for himself, and using drugs, and medicine, and relying on
14 other people. And let me break that down. It goes into his
15 history.

16 I've detailed how at a young age he was diagnosed with
17 various conditions. ADD, bipolar, anxiety, depression. His
18 mother just mentioned to me before court that her recollection,
19 he was actually once diagnosed as schizophrenic, which I did
20 not know. And during those years, he received some counseling
21 and some medication. But I think that from speaking to the
22 family and Mr. Padilla personally, it sounds like they didn't
23 really get the medication right. Sometimes it had a bad
24 effect. His family told me just recently that it made him less
25 responsive and he didn't like the medicine, and then would go

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1 off of it, and self-medicated with opiates, which he became
2 severely addicted to.

3 What I see also though is he's trying to take -- by
4 not taking the medicine, it is actually a form of -- I think it
5 is taking responsibility for himself. It was a misguided
6 thing. He is trying to do it by himself. This also has come
7 up during his time while this case has been pending. I believe
8 he's not been taking the medication offered at the MDC. I'm
9 not sure that they offer all of the options that you might get
10 on the outside.

11 What he has done is put himself through a really
12 incredible regimen of physical fitness, and has transformed
13 himself. This is, to me, very, very significant because I know
14 how closely it is tied to self-esteem.

15 When he was a kid, 13, I think he said, he weighed
16 about 200 pounds. And this is something that he struggled with
17 for decades and affected his image, and he did have very low
18 self-esteem. And in the past few years, he has decided he's
19 going to take responsibility for that.

20 I know this might sound trivial to some people, but
21 it's not to me. I know the effect of physical health. And
22 when you're able to lose something like 150 pounds, and become
23 really in peak shape, this is not something that's common in
24 prison. They all have time to exercise. They don't do this.
25 When you do that, it gives you a sense of pride and

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1 accomplishment.

2 And when I've talked to him in recent months, he does
3 have a plan about what he wants to do. He wants to get a GED.
4 He's been asking for tutoring from other inmates on math
5 because he struggles with that. He's taken it a number of
6 times, but he's failing, but he's determined to get it. He
7 wants to get a commercial driver's license because he knows
8 that's a good plan. He's told me when he gets transferred to a
9 halfway house, he's got an idea. He is going to work as many
10 hours as he can work, and he does have a history of that, even
11 while he was committing those crimes he was at least for a
12 couple of years employed full-time. He's planning to save
13 every cent so when he gets out, he can put a deposit down and
14 get his own place.

15 Now, I can also say I spoke to his family about what
16 was mentioned about this niece not wanting -- that I found it
17 odd. Probation spoke to one particular person and got that
18 information. Maybe they weren't, maybe when others were not
19 around. He did not speak to his mother, did not speak to
20 another niece, and his uncle who is here, and other people have
21 told me there is a place for him when he gets out. If he needs
22 a place, they will put, they will gladly have him. So, okay,
23 one niece did not want him to be there. And I understand that,
24 she's got children. Mr. Padilla has a long history of drug
25 abuse. It's completely natural that she wouldn't want him

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1 there, even though she obviously loves him at the same time.
2 But it is not true to say he doesn't have a place to go. He
3 does have a place to go, he's got a lot of support from his
4 family. And in any event, what he wants to do is he wants to
5 get his -- he does want to get his own place in a different
6 neighborhood from where he grew up. He wants to continue with
7 his fitness regimen. He thinks he can get some part-time work
8 doing that. That's not really his long employment goal. It is
9 more a passion for him at this point.

10 Another thing that's important is he is determined to
11 reestablish relationship with his daughter. And you may recall
12 from my memo that he had a longterm relationship with the
13 girlfriend, the daughter was born in 2012, they were together,
14 Mr. Padilla was supporting both the girlfriend and the daughter
15 for about three or four years when they lived together. Then
16 they broke up, which was a very upsetting experience for my
17 client. He continued to support his daughter. He asked the
18 Court for visitation, was granted it. The daughter would come
19 around on the weekends.

20 Now, while he has been in here, I think recently he
21 has been served with papers where I think his girlfriend is
22 trying to interfere with his rights or limit them in some way.
23 Full custodial rights. This is something that I'm trying to
24 help my client with. He's very concerned about it. He wants
25 to fight that, which is difficult.

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1 But, my point here is that his plan is to be a father
2 when he gets out. His plan is to work full-time. His plan is
3 to get a GED. His plan is to start as a dishwasher, but move
4 up. And I think that for the first time in his life, he has a
5 sense that he has the ability to do these things.

6 (Defendant conferring with his counsel)

7 MR. NEUMAN: My client is just reminding me he would
8 like a chance to speak when this is done.

9 THE COURT: Of course.

10 MR. NEUMAN: So I'll make sure he will have that
11 opportunity. My client has told me he thinks this arrest has
12 saved his life. That is not something I hear from most people.
13 I believe it. I believe he is sincere when he tells me this.
14 He knows how terrible drugs are. He has no intention of going
15 back to this. While he's been arrested many times, it's true,
16 he's never served a sentence anywhere close to this. I think
17 was it -- I am not sure even more than a few months.

18 THE DEFENDANT: I did 18 months.

19 MR. NEUMAN: 18 months as a juvenile in a juvenile
20 facility. That was it.

21 As far as specific deterrence is concerned, I can tell
22 you, the difference between the minimum 60 months, what I'm
23 talking about, and something in the 70s, that's not going to
24 have any impact on my client about whether he is going to do
25 this kind of behavior again. Five years is plenty to persuade

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1 him this is not a good thing.

2 I will also say I find it quite implausible that
3 anybody on the street is going to think, well, this guy, he got
4 five years, but he could have gotten six or seven years and
5 that's somehow going to be an incentive or not a deterrent to
6 them. I don't think that's the way people work. The
7 government was adamant that he receive a (b)(1)(B). Five-year
8 minimum. That's a deterrent, Judge.

9 It would be one thing if he were here and he was
10 facing a (b)(1)(C) and we would be talking about whether he
11 should get two years or something like that. But we're not
12 talking about that. Nobody is suggesting that someone in
13 Mr. Padilla's position be let out in a couple of years. It so
14 happens he's been in jail for a couple of years already, but it
15 is a five-year minimum sentence. That's substantial for
16 someone who is an addict and has had a lot of problems, and
17 he's working through them and I do see first hand someone who
18 has growing self-esteem. And I think that if he's under proper
19 supervision, and by that I mean, he's given a program when he
20 gets out -- and incidentally, he wants very much to attend a
21 residential drug treatment program while he's in, something he
22 specifically asked me to ask your Honor to recommend.

23 I think that he recognizes that he does have some
24 psychological issues that need some kind of counseling. And I
25 hope in the future that we can find a proper balance of

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1 medicine. That's not always easy to do. But, he knows he
2 needs help. He doesn't -- he wants to be there for his
3 daughter, and he's not going to do this again. And I think
4 I've covered everything. If you have anything else I can
5 respond to.

6 THE COURT: I have no specific questions. Thank you
7 very much.

8 Mr. Padilla, at this time I understand you'd like to
9 speak and I invite you to do so. I do want you to be aware you
10 are not obligated to speak with me, but if you wish to do so, I
11 will take very seriously all you will say.

12 What I will ask you, sir, just because of the
13 acoustics in this courtroom, if you could please speak a little
14 louder and a little slower than you might otherwise in your
15 conversations with others, because I want to make sure everyone
16 in this courtroom, including the folks in the gallery, hear
17 from you. Thank you, sir.

18 THE DEFENDANT: Yes. Good afternoon, your Honor.

19 THE COURT: Good afternoon, sir.

20 THE DEFENDANT: I'm not coming here with like a letter
21 written to tell you something that you heard a million times
22 before. I made a lot of mistakes in my life, constantly doing
23 the same thing, going back to jail and coming back out, because
24 I had a fear of hopelessness and failure. When a person goes
25 to jail and they come out and they have a record, they feel

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1 like they can't do nothing better but that same exact thing.
2 Because they feel like I can't get a job, I can't do this, I
3 can't do none of this, because I already went to jail. I have
4 a felony. So it's that doubt in the back of your mind that
5 gives you that, that thought where you set yourself up for
6 failure.

7 So it was like now that I been here, I got a chance to
8 rehabilitate myself physically and mentally and know that
9 there's hope, and this is not the end of the road. I know I
10 can come out and do other things to better myself and better my
11 life.

12 I would like to apologize to my family, to the
13 families that I destroyed selling them the drugs, and my
14 daughter as well, because she's seven years old and she's not
15 getting no younger and I'm not getting no younger. I'm getting
16 older. I'm 30 years old now. I been selfish to myself,
17 leaving my kid behind, coming to jail behind and being a
18 disappointment.

19 And I do say at this stage in my life, because I got
20 hit by the Mack truck this time. Maybe before I went to the
21 state, I got a little locked up in Rikers for five, five
22 months, it wasn't a bad penalty. Now I can see how serious
23 things can get, and I got to sit here and really think and be
24 around people that I'm around every single day in here that got
25 30, 40 years, and may not got a chance to come home again. So

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1 I got to see things from a different light.

2 Not that I'm coming here for a pity party from any of
3 y'all. I am coming to tell you how I feel honestly as a man.
4 And you know, like, my mental health states and my depression
5 and anxiety all the stuff that I dealt with my whole life, I
6 found other ways, like exercise, music, books, and other things
7 to try to cope with things. I feel like pills and drugs ain't
8 the solution to everything. I was taking Xanax when I was home
9 from my psychiatrist and other type of mental health
10 medications that was stabilizing me, but it wasn't stabilizing
11 me. It was a super hero pill that I was taking that was just
12 narrowing me out. So as to the point where I'm high, so of
13 course, nothing's bothering me. So I'm getting a case of "F
14 it," you know what I mean, everything doesn't matter.

15 But now I got the chance to really clear my mind and
16 look at things and see what's more important and more valuable.
17 And this is not it. Whether you guys want to believe me or
18 not, or he wants to paint the picture however he wants to paint
19 it, that's cool. I am not here to tell anybody how to do their
20 job.

21 All I'm telling you, ma'am, I am coming here to talk
22 to you as an adult to tell you this is sincerity in my voice.
23 I got to see things from a different light. I just hope
24 whatever decision you make today, you make the right one. Have
25 a blessed day.

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1 THE COURT: Mr. Padilla, Mr. Neuman may have told you
2 this. If not, I will tell you that, unlike most judges in this
3 district, I take a break between hearing from everybody and
4 imposing sentence. And the reason I do that is because I do
5 not come to this proceeding with a sentence already in mind.
6 It is very important for me to keep an open mind until I've
7 heard from everyone, and you are the last, and on many levels,
8 the most important person from whom I hear.

9 I am going to ask for your patience while I step off
10 the bench and gather my notes together, because I want to make
11 sure again that I have a moment to think clearly about
12 everything I've heard today and about everything I've read in
13 preparation for this sentence.

14 Mr. Balsamello, is there something you wish to add?

15 MR. BALSAMELLO: May I respond briefly to something
16 Mr. Neuman said?

17 THE COURT: You may sir, yes.

18 MR. BALSAMELLO: Something I think worth considering
19 is the degree to which five years -- he is saying five years is
20 not we are not (b)(1)(C) world where we're talking two or
21 three, but five years is not actually five years, and
22 Mr. Neuman highlighted two ways that it's not: The residential
23 drug program and the halfway house. Both of those together
24 could result in Mr. Padilla doing considerably less than five
25 years if he's given a five-year sentence. And that is

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1 something that we know from talking to cooperators, people in
2 the street do notice. That cooperating witnesses in a case are
3 still sitting in and hearing that someone is getting out a year
4 later because they are going to go to the halfway house and
5 they've done the drug program. Five years is not a full 60
6 months in terms of time spent incarcerated, and from speaking
7 with witnesses and people who have been involved in
8 conspiracies like this, I know they do notice how long people
9 are aware for. That five versus six versus seven is, we
10 believe, material.

11 THE COURT: Again, just to probe this issue a little
12 bit further. One has to complete successfully the RDAP program
13 before one gets any break on their sentence. Is that not
14 correct?

15 MR. BALSAMELLO: I believe that's correct.

16 THE COURT: Right. So recommending, if indeed I do
17 recommend, Mr. Padilla for this program, that that's not what
18 guarantees him any shortening of his sentence. It is his work,
19 his successful work, if indeed he is successful, that results
20 in the reduction of the sentence. Also correct?

21 MR. BALSAMELLO: That's fair. It is a degree to which
22 the punishment for the crime, though, is mitigated by something
23 he then does after the fact. And the halfway house is another
24 way that the sentence is augmented a bit in a way that I think
25 people do realize, in a way that affects the general deterrent

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1 effect of it.

2 THE COURT: All right.

3 MR. BALSAMELLO: Thank you.

4 THE COURT: I've taken the note. Thank you.

5 Mr. Neuman, as you can tell from -- well, you have
6 heard my discussion with Mr. Balsamello. I think I do
7 understand both sides of the issue, but if you or your client
8 wish to be heard on that one point, I'll hear from you.

9 MR. NEUMAN: No, Judge. I think I said everything.

10 THE COURT: Thank you very much. I'll be back as soon
11 as I can. If it's possible for the marshals to allow
12 Mr. Padilla to speak with his family members, I would
13 appreciate it. Thank you.

14 (Recess)

15 (In open court)

16 THE COURT: What I'm going to do now is outline the
17 sentence that I intend to impose, and then I will give each
18 side an opportunity to make legal objections before I actually
19 impose sentence.

20 We've spoken a lot this afternoon about the factors
21 that are set forth in Section 3553(a) of Title 18 of the United
22 States Code, and the ones that I focused on this afternoon are
23 as follows: The nature and circumstances of the offense, the
24 history and characteristics of Mr. Padilla, the need for the
25 sentence imposed to reflect the seriousness of the offense, to

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1 promote respect for the law, to provide a just punishment for
2 the offense, to afford adequate deterrence to criminal conduct,
3 to protect the public from further crimes by Mr. Padilla, to
4 provide him with needed educational and vocational training,
5 medical care or other correctional treatment in the most
6 effective manner. I must consider the sentencing guidelines,
7 and I'll speak about them momentarily, and I must consider the
8 need to avoid unwarranted sentence disparities among similarly
9 situated defendants.

10 So, I ultimately agree with the probation office's
11 calculation of the guidelines in this case. The base offense
12 level is 30, and there is a three-level reduction for
13 acceptance of responsibility, yielding an adjusted offense
14 level of 27. But I read, as apparently the guidelines or
15 sentencing commission hotline does, recognizing the merit and
16 the thoughtfulness of Mr. Balsamello's position, I feel more
17 comfortable finding that it is not countable. I agree it could
18 have been drafted better. But in all candor, it wouldn't make
19 a difference, because I would impose the same sentence that I'm
20 about to impose, irrespective of whether I found Mr. Padilla to
21 be in criminal history category II or I.

22 In this case, however, I find that he has no criminal
23 history points and that he is in criminal history category I,
24 and that the resulting guidelines range is 70 to 87 months.

25 I appreciate very much the efforts on both sides to

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1 give me a more complete picture regarding Mr. Padilla, and I
2 want to just ask something beforehand regarding a possible
3 correction to the PSR that I meant to mention at the beginning.
4 If I could ask the parties to look please at paragraph number
5 eight, I think this is a tiny little glitch, but it suggests
6 that the sanctions imposed for Mr. Padilla being in an
7 authorized area, which would be a strange thing indeed. So I
8 just, just because someone at the BOP may read this report and
9 do something with it, is there any objection to my correcting
10 it to make it "unauthorized area"?

11 MR. BALSAMELLO: No, your Honor.

12 MR. NEUMAN: No, your Honor.

13 THE COURT: Thank you. Again, I am not being glib
14 here, but I don't know how folks at BOP read those documents,
15 so it might as well be accurate.

16 Let me move from that housekeeping measure and turn to
17 the very important issue of Mr. Padilla's sentencing. As in
18 many cases, and as I expect with other defendants in this case,
19 there are very good and very bad and very sympathetic qualities
20 to Mr. Padilla. I do appreciate the improvements that he has
21 made to himself mentally and physically while incarcerated. I
22 appreciate the fact that he, with the assistance of his
23 counsel, has worked on a plan for reentry into society. And I
24 appreciate the fact that he has been addressing certain mental
25 health and issues that he has had. And I think I understand

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1 why he might forgo medication in favor of healthier living, or,
2 as he said I believe, exercise and music and reading. And I
3 hope and I know he does, too, that someday he passes the GED
4 and actually has that, because I think that will open up more
5 employment opportunities for him.

6 On the other side of the scales is the amount of time
7 that he was involved in this conspiracy, and the sheer number
8 of transactions in which he was involved and the fact that it's
9 nearly nine years. And even he realizes the harm that he and
10 others have done to the neighborhood.

11 I begin at the guidelines range of 70 to 87 months. I
12 suppose I begin as well as another guidepost with the mandatory
13 minimum term of 60 months. And ultimately, I've decided to
14 impose a term of 66 months' imprisonment. I do think there
15 needs to be more than the bare minimum mandatory minimum. But
16 I also don't think that a 70-month sentence is necessary, and I
17 think that there are things that Mr. Padilla has done in prison
18 that warrant my recognizing this in terms of sentencing, and I
19 therefore do.

20 So just on the point, on the discussion that I was
21 having at the very end with Mr. Balsamello, it may be that
22 Mr. Padilla completes successfully the RDAP program and that
23 gets him additional time off his sentence. It may be that he
24 qualifies for halfway house treatment at some point in the very
25 late stage of his sentencing. In those regards, however, his

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1 destiny is in his own hands, and it is up to him to complete
2 the program. One does not go into the program and then get
3 time off. He has to do something. He has to go through 500
4 hours I believe of the program.

5 So, I am willing to let Mr. Padilla put his fate in
6 his own hands for those things, and if it turns out that
7 results in additional reductions in his sentence, then so be
8 it.

9 But I'm imposing a term of 66 months' imprisonment,
10 and I'm ordering that term be followed by a term of supervised
11 release of three years with the mandatory, standard and special
12 conditions that have been outlined in the presentence
13 investigation report.

14 I am not imposing a fine. I am not imposing
15 restitution. I'm not ordering forfeiture. But I am obligated
16 to impose a \$100 mandatory special assessment.

17 Mr. Balsamello, is there any reason why I may not
18 impose this sentence?

19 MR. BALSAMELLO: I think, your Honor, under Section
20 (b)(1)(B) it is actually a mandatory four years.

21 THE COURT: You are exactly right and thank you. Yes.
22 In recent sentencings involving your office, folks have gone to
23 the (b)(1)(C) level, and I think that was the note I had in my
24 mind.

25 It will be four years of supervised release. Thank

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Sentence

1 you for that.

2 Other than that, sir, is there any reason why I may
3 not impose this sentence?

4 MR. BALSAMELLO: No, your Honor.

5 THE COURT: Mr. Neuman, with that correction, this
6 does have to be four years, sir. Is there any reason why I may
7 not impose this sentence?

8 MR. NEUMAN: No, your Honor.

9 THE COURT: Mr. Padilla, please rise.

10 Mr. Padilla, after considering all of the sentencing
11 factors set forth in Section 3553(a) of Title 18 of the United
12 States Code, I find that a term of 66 months' imprisonment is
13 sufficient, but not greater than necessary, to comply with all
14 of the purposes of sentencing. I will order that term of
15 imprisonment be follow by a term of four years of supervised
16 release with the mandatory, standard and special conditions
17 that are set forth in the presentence report. I will not
18 impose a fine or restitution or forfeiture, but I must impose a
19 \$100 mandatory special assessment.

20 Do you understand that, sir?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Sir, please be seated. Thank you.

23 Mr. Neuman, you've asked for and I will grant the
24 recommendation or the request that, as BOP deems appropriate,
25 that Mr. Padilla be placed in a residential drug abuse program.

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Sentence

1 Is there a further recommendation that you'd like me to make
2 regarding place of designation?

3 MR. NEUMAN: Yes.

4 THE DEFENDANT: Danbury --

5 MR. NEUMAN: So Judge, I'm not sure if you'd like to
6 get this specific. My client's preferences are Danbury or Fort
7 Dix. I usually simply ask for as close as possible to New York
8 City, and I know his priority, it has to be a place that does
9 offer that residential drug treatment program.

10 THE COURT: That's fine. I have in the past
11 recommended or asked for specific places, recommended specific
12 places, and I don't mind doing that here. What I was told by
13 the bureau of prisons is that I should have a fallback position
14 if it turns out those facilities do not have the requested
15 space, because otherwise, the defendant will end up anywhere
16 they have space, which could be a different coast.

17 MR. NEUMAN: That's my concern. Perhaps you could say
18 either Fort Dix or Danbury, or if that doesn't work, a facility
19 close to New York City.

20 THE COURT: That is exactly the way we will phrase it.
21 Danbury and Fort Dix, and failing those, a facility that offers
22 an RDAP program in the New York City metropolitan area, as
23 close to it as possible.

24 MR. NEUMAN: Perfect.

25 THE COURT: We'll do that.

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1 Let me have your attention for just one moment. I'm
2 advised there may be another hiccup in the PSR. My deputy, who
3 reads these documents with great care, reminds me that even the
4 probation officer had some confusion about whether the
5 appropriate range was 70 to 87 month or 78 to 97 months. So,
6 given, as you can see on page 22 of the PSR, she finds criminal
7 history category II, even though throughout the rest of the PSR
8 she has found it as criminal history category I. So I'm going
9 to find and I will therefore make corrections to those portions
10 of the PSR that recite a criminal history category of II, and
11 that it be 70 to 87 months.

12 Mr. Balsamello, any disagreement with that?

13 MR. BALSAMELLO: No, your Honor.

14 THE COURT: Mr. Neuman, any disagreement?

15 MR. NEUMAN: No, your Honor.

16 THE COURT: Mr. Padilla, to the extent that you have
17 not waived this in any agreement that you may have with the
18 government, you have the right to appeal from your conviction
19 and from your sentence. If you're interested in appeal, please
20 speak with Mr. Neuman at your earliest opportunity, because,
21 generally speaking, you have two weeks from the date that I
22 file the written judgment of conviction to file a notice of
23 appeal. And my expectation is that I will be filing the
24 judgment some time tomorrow. So if appeal is something in
25 which you're interested, please discuss it with Mr. Neuman. Do

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Sentence

1 you understand that, sir?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Thank you. Mr. Balsamello, I don't know
4 if there are underlying charges instruments that require
5 dismissal. Are there?

6 MR. BALSAMELLO: No, your Honor.

7 THE COURT: Sir, let me ask you, is there anything
8 else we should be addressing?

9 MR. BALSAMELLO: Not from the government.

10 THE COURT: Mr. Neuman, anything else we should be
11 addressing?

12 MR. NEUMAN: No, your Honor.

13 THE COURT: May I address your client directly, sir?

14 MR. NEUMAN: Please do.

15 THE COURT: Mr. Padilla, I want you to understand
16 you've been very well represented in this case, and I accept
17 what you've said to me, which is this experience has been just
18 very different from your prior state court experiences. I'm
19 sure you understand that the very last thing that you want to
20 do is to see me again in this context.

21 So I wish you well in completing your sentence. I
22 hope your daughter is able to see you more frequently. I hope
23 that you're able to put in place the plans we've been talking
24 about this afternoon. And it is my hope, and I know you will
25 take no offense at this, that you and I not see each other in

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1 this setting again, because if we do it means you have violated
2 the terms of supervised release, and I can assure you that any
3 leniency that I've shown you this afternoon, I will not show
4 you again.

5 So I wish you well, sir, even if this means this is
6 our last time seeing each other today.

7 With that, we are adjourned. Thank you very much.

8 (Adjourned)